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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/217,878	12/21/1998	GREGORY SCOTT DUNCAN	VTN-415	3825

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PATENT LAW DEPARTMENT
JOHNSON & JOHNSON
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NEW BRUNSWICK, NJ 08933-7003

EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/01/2004

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/217,878

Applicant(s)

DUNCAN ET AL.

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-35 and 49-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-35&49-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 26-30 and 49 are rejected under 35 U.S.C.103(a) as being unpatentable over the patent to Kuethe (5,155,969 – cited by applicant) in view of Highberger (5,836,136) or Connor (4,511,044). The Kuethe device comprises a plurality of carriers (16) carrying containers (25), a plurality of vertically moveable lifts (68,70,72 and 74), a plurality of platens (52,54,56,58) one on each of the lifts, a plurality of mandrels (44,46,48,50) above the platens and a lidstock maneuvering system (30+) for placing a lidstock sheet between the containers on the carriers and the mandrels which seal the lidstock to the containers to form a set of packages. The packages are subsequently separated after leaving the machine. The main difference between the machine of Kuethe and the claimed invention is the number of containers on each platen. The Kuethe devices uses two containers 25 and 26 on each platen but it would have been obvious to one of ordinary skilled in the art to use one or any number of containers since the number is merely a matter of design consideration and duplication of parts. Furthermore, the number of containers being operated on is merely a matter of experimentation to develop the optimum and most efficient machine operation. Regarding the number of mandrels used, it is well known in the art to use a single mandrel to seal a plurality of containers if individual control of the sealing operation is not necessary or desired. It therefore would have been obvious to one of ordinary skilled in the art to use a single mandrel in the Kuethe machine to seal a plurality of containers. The specific product being packages is given little patentable significance in apparatus claims since it does not affect the structure of the device.

The Kuethe device lacks the controlling of the pressure in the sealing head. The patents to Highberger and Connor each shows a packaging device comprising of opposing reciprocating sealing surfaces (30,32, and 24,26, respectively), pressure transducer for sensing the pressure between the surfaces (52 and 22, respectively) and control means (Figure 2 and Figure 12, respectively) that respond to signals received from the transducer to control the pressure being applied by the sealing surfaces (see column 10, line 48-57 and column 7, line 24 et seq., respectively). These pressure control control the quality of the sealed package. It would have been obvious to one skilled in the art to control the pressure applied by the sealing platens and mandrel of Kuethe as taught by Highberger or Connor to prevent the manufacturing of packages with defective seals. Regarding claim 49, the mounting of the transducer to either the mandrel or the lift is a matter of design. Applicant has not disclosed that placing it on the mandrel or the lift provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been an obvious matter of design choice to modify Kuethe and the Highberger/Connor combination to obtain the invention as specified in claims.

Claims 31-35, 50 and 51 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Kuethe in view of Edwards (5,565,059 – cited by applicant) or Edwards (5,528,878) and of Highberger (5,836,136) or Connor (4,511,044). The patent to Kuethe does not specifically teach the inspection of the packages. The patents to Edwards shows a contact lens packaging system wherein an inspection system verifies the proper alignment of the printed matter on the lidstock within the machine (see column 8, lines 30-36 and column 10, line 1, respectively). It would have been obvious to one skilled in the art to provide the packaging a system of Kuethe

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with an inspection system such as disclosed by Edwards to ensure proper registration of the lidstock with the containers. Regarding the pressure control, see the comments made in the first art rejection made above.

Claims 26-35 and 49-51 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Ciba Geigy(WO 98/32587) – cited by applicant) and of Highberger (5,836,136) or Connor (4,511,044). The Ciba device comprises a plurality of carriers (1) carrying containers (3), a plurality of vertically moveable lifts (61), a plurality of platens (top portions of 61) one on each of the lifts, a plurality of mandrels (70) above the platens and a lidstock maneuvering system for placing a lidstock sheet between the containers on the carriers and the mandrels which seal the lidstock to the containers to form a set of packages. The main difference between the machine of Ciba and the claimed invention is the number of containers on each platen. The Ciba devices uses more than one container on each platen but it would have been obvious to one of ordinary skilled in the art to use one or any number of containers since the number is merely a matter of design consideration and duplication of parts. Furthermore, the number of containers being operated on is merely a matter of experimentation to develop the optimum and most efficient machine operation Regarding the number of mandrels used, it is well known in the art to use a single mandrel to seal a plurality of containers if individual control of the sealing operation is not necessary or desired. It therefore would have been obvious to one of ordinary skilled in the art to use a single mandrel in the Ciba machine to seal a plurality of containers. Regarding the pressure control, see the comments made in the first art rejection made above.

Claims 26-28,35 and 49 are rejected under **35 U.S.C. 103(a)** as being unpatentable over the patent to Giovannone (5,379,572) in view of Kuethe and Highberger (5,836,136) or Connor

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(4,511,044).. The patent to Giovannone shows a packaging machine which comprises a plurality of carriers (read on the portion of the conveyor holding/pushing each blister), a plurality of vertically moveable lifts 22,32,42, a plurality of platens 26,36,46 on the lifts, a plurality of mandrels 20,30,40 above the platens and a lidstock maneuvering system 16 for placing lidstock between the blisters on the carriers and the mandrels which seal the lidstock to the blisters. It would have been obvious to one of ordinary skilled in the art to provide the lidstock of Giovannone in a continuous sheet form that is subsequently cut to any size as shown by Kuethe to ease the positioning of the lidstock in the sealing mechanism. The specific product being packages is given little patentable significance in apparatus claims since it does not affect the structure of the device. Regarding the pressure control, see the comments made in the first art rejection made above.

Claims 29-34,50 and 51 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Giovannone in view of Kuethe (as applied above) and further in view of Edwards (5,565,059 – cited by applicant) or Edwards (5,528,878) and Highberger (5,836,136) or Connor (4,511,044).. The patent to Kuethe does not specifically teach the inspection of the packages. The patents to Edwards shows a contact lens packaging system wherein an inspection system verifies the proper alignment of the printed matter on the lidstock within the machine (see column 8, lines 30-36 and column 10, line 1, respectively). It would have been obvious to one skilled in the art to provide the packaging a system of Kuethe with an inspection system such as disclosed by Edwards to ensure proper registration of the lidstock with the containers. Regarding the pressure control, see the comments made in the first art rejection made above.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are not persuasive.

Applicant's main arguments regarding the rejections based on the Kuethe patent is that the rejection "incorrectly identifies components 52,54,56 and 58 as platens" and "incorrectly identifies components 44,46,48 and 50 as mandrels". Applicant further states that these elements are referred to by the patent as "vacuum chambers". The Examiner maintains that since the function of these elements in both the machine of the application and the machine of the patent are the same these elements are equivalent and the elements of the patent can be considered as "mandrels" and "platens". The function of the platens and mandrels of the instant application is to seal the lidstock to the flanges of the containers (see page 8 of the specification) and the functions of the elements of Kuethe is the same, i.e. sealing the lid to the flanges of the container (see column 5, line 44 et seq and column 6, line 47 et seq.). The additional function of the Kuethe elements of evacuating the containers does not detract from their sealing function.

Regarding the arguments of the secondary references to Highberger and Connors that they do not show compatible pressure controls and transducers, these reference disclose "pressure" transducers that sense and control the pressure between two reciprocating sealing elements and therefore are considered to be sufficiently compatible. Furthermore, note that the claims do not specifically detail the structure of the transducers or the controls. Assuming even if applicant's arguments are correct, it would have been obvious to one of ordinary skill in the art in view of the teachings of Highberger and Connors to provide the Kuethe machine with compatible transducers and controls. Regarding the number of transducers, the secondary

reference teaches a single transducer for a single sealing mechanism and applying that teaching to the Kuethe patent, it would have been obvious to one of ordinary skill in the art to provide a single transducer for each sealing mechanism.

Regarding the rejections based on Ciba Geigy, the reference may not teach the sensing and controlling of the sealing pressure but the secondary references do teach this concept and structure. The additional teaching of this reference of controlling the sealing temperature has little bearing on the claims and the applied rejections.

Regarding the rejections based on Giovannone, the reference may not teach a single continuous lidstock but that teaching is provided by the secondary reference of Kuethe. In view of that teaching it would have been obvious to one of ordinary skill in the art to use a single lidstock in the Giovannone machine to permit the use of a single lidstock feeding means instead of a plurality of such systems. The use of different lidstock does not affect the number of mandrels or platens.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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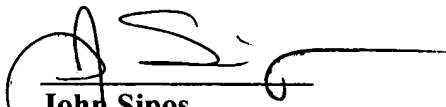
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721

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